

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA

Plaintiff,

v.

TECUMSEH PRODUCTS
COMPANY

Defendant.

CIVIL ACTION NO. _____

CONSENT DECREE FOR THE UPPER RIVER WORK
ON THE SHEBOYGAN RIVER

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Sheboygan River and Harbor Superfund Site in Sheboygan, Wisconsin, together with accrued interest; and (2) performance of studies and response work by the Defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Wisconsin (the “State”) on April 11, 2001, of negotiations with potentially responsible parties regarding the remedial design and remedial actions for the Site.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of Interior and the Department of Commerce on April 11, 2001, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of a Consent Decree.

E. The Defendant that has entered into this Consent Decree (“Settling Defendant”) does not admit any issue of fact or law or any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint or this Consent Decree. Nothing in this

Consent Decree nor the entry thereof shall be construed an acknowledgment that any release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on May 21, 1986.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the Settling Defendant, Tecumseh Products Company, commenced in May 1987, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

H. Tecumseh Products Company completed a Remedial Investigation (“RI”) Report in May 1990, and completed a Feasibility Study (“FS”) Report in April 1998.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action in July 1999, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the remedial action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on May 12, 2000, on which the State had a reasonable opportunity to review and comment. The ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a

responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendant, if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President.

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Upper River Work (as defined below) required by this Consent Decree and to each person representing the Settling Defendant with respect to the Site or the Upper River Work and shall condition all contracts entered into hereunder upon performance of the Upper River Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Upper River Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Upper River Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

“Consent Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day. “Working day” shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 98.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“Matters Addressed” by this Consent Decree are the Upper River Remedial Action, Past Response Costs, and Upper River Future Response Costs.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Upper River Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Upper River Statement of Work (URSOW).

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States and the Settling Defendant.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through August 31, 2002, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Upper River Remedial Action set forth in Section II of the URSOW and the ARARs set forth in Section M (pages 83-86) of the ROD. The performance standards may be modified pursuant to Paragraph 13, below.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on May 12, 2000, by the Regional Administrator, EPA Region 5, or his delegate, and all attachments thereto. The ROD is attached as Appendix A.

“Section” shall mean a portion of this Consent Decree identified by a roman numeral.

“Settling Defendant” shall mean Tecumseh Products Company.

“Site” shall mean the Sheboygan River and Harbor Superfund Site, encompassing approximately 14 river miles, located in east-central Wisconsin, Latitude 43.75, Longitude 87.7, and running through the City of Sheboygan Falls, the Village of Kohler, and the City of Sheboygan, Sheboygan County, Wisconsin and depicted generally on the map attached as Appendix C. The portion of the river included in the Site extends from the Sheboygan Falls Dam through the Outer Harbor area on the western shore of Lake Michigan. Also included in the Site are floodplain soils adjacent to the river and soil and groundwater on the Tecumseh Products Plant adjacent to the river in Sheboygan Falls, and all areas in close proximity to the river, floodplain soils, and Tecumseh Products Plant necessary for implementation of the remedial action set forth in the ROD.

“State” shall mean the State of Wisconsin.

“Supervising Contractor” shall mean the principal contractor retained by the Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

“United States” shall mean the United States of America.

“Upper River” or “upper river” shall mean that portion of the Site from the Sheboygan Falls Dam in the City of Sheboygan Falls to the Waelderhaus Dam in Kohler, including floodplain soils adjacent to the river and soil and groundwater on the Tecumseh Products Plant

site located adjacent to the river in Sheboygan Falls, and all areas in close proximity to the river, floodplain soils, and plant site necessary for implementation of the Upper River Remedial Action and Operation and Maintenance.

“Upper River Future Response Costs ” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States pays or incurs on or after September 1, 2002, in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Upper River Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, VIII (including, but not limited to, the cost of attorney time and any other costs incurred to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XIV, and Paragraph 79 of Section XX.

“Upper River Remedial Action” shall mean those activities, except for Operation and Maintenance, to implement the Upper River Sections of the ROD as defined below, in accordance with the Upper River SOW and the final Upper River Remedial Design and Upper River Remedial Action Work Plans and other plans approved by EPA.

“Upper River Remedial Action Work Plans” shall mean the documents developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

“Upper River Remedial Design” shall mean those activities to be undertaken by the Settling Defendant to develop the final plans and specifications for the Upper River Remedial Action pursuant to the Upper River Remedial Design Work Plan.

“Upper River Remedial Design Work Plans” shall mean the documents developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

“Upper River Sections of the ROD” shall mean those portions of the ROD that address the upper river sediments, the floodplain soils, and the groundwater and additional source investigation components of the selected remedy. These sections include, but are not limited to: Section E (Site Characteristics), Page 8, dealing with upper river PCB contamination; Section H (Remediation Objectives), subsections 1 (PCB threat objective) and 2 (PCB source/transport objective); Section L (Selected Remedy) Pages 61 to 66 (dealing with upper river sediment remedy) and Page 80 (dealing with the floodplain soils, and the groundwater and additional source investigation selected remedy components).

“Upper River Statement of Work” or “URSOW” shall mean the statement of work for implementation of the Upper River Remedial Design, Upper River Remedial Action, and Operation and Maintenance, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Upper River Work” shall mean all activities Settling Defendant is required to perform under this Consent Decree, except those required by Section XXIV (Retention of Records).

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous material” under the Wisconsin Statutes and Wisconsin Administrative Code, Sections NR 720 and NR 722.

“WDNR” shall mean the Wisconsin Department of Natural Resources and any successor departments or agencies of the State.

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendant, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendant as provided in this Consent Decree.

6. Commitments by Settling Defendant.

Settling Defendant shall finance and perform the Upper River Work in accordance with this Consent Decree, the Upper River Sections of the ROD (as further delineated in the URSOW), the URSOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendant and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Upper River Future Response Costs as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of federal and state environmental laws as set forth in the ROD and the URSOW. The activities conducted in compliance with this Consent Decree will be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Upper River Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Upper River Work). Where any portion of the Upper River Work that is not on-site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendant may seek relief under the provisions of Section XVII (Force Majeure) of this Consent Decree for any delay in the performance of the Upper River Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Upper River Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by the Settling Defendant that is located within the Site, within 30 days after the entry of this Consent Decree, the Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Sheboygan County, State of Wisconsin, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on May 12, 2000, and that Parties have entered into a Consent Decree requiring implementation of the remedy. Such notice shall identify the United States District Court in which the Consent

Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Defendant shall record the notice within 20 days of EPA's approval of the notice. The Settling Defendant shall provide EPA with a certified copy of the recorded notice within 14 days of recording such notice.

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Defendant conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section VIII (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section VIII (Access and Institutional Controls). At least 30 days prior to such conveyance, the Settling Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section VIII (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Settling Defendant to comply with all provisions of this Consent Decree, absent

the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Upper River Work under this Consent Decree.

VI. PERFORMANCE OF THE UPPER RIVER WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Upper River Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Upper River Work by Settling Defendant), VII (Quality Assurance, Sampling and Data Analysis), and XIV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the State. Within 10 days after the lodging of this Consent Decree, Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, that will be collecting data under this URSOW, Settling Defendant shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to EPA and must obtain an

authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Upper River Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendant may seek relief under the provisions of Section XVII (Force Majeure) hereof.

11. Upper River Remedial Design.

a. Within 90 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendant shall submit to EPA and the state a work plan for the design of the Upper River Remedial Action at the Site ("Upper River Remedial Design Work Plan" or "URRD Work Plan"). The Upper River Remedial Design Work Plan shall provide for design of the remedy set forth in the URSOW and for achievement of the Performance Standards and other requirements set forth in this Consent Decree and the URSOW. The Upper River Work will be partitioned into phases to facilitate sequencing of the work. Upon its approval by

EPA, after reasonable opportunity for review and comment by the State, the Upper River Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 105 days after EPA's issuance of an authorization to proceed under Paragraph 10, the Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The URRD Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the URSOW. The plan shall document the responsibility and authority of all organizations and key personnel involved with the design and shall include a description of qualifications of key personnel directing the Remedial Design, including contractor personnel. The URRD Work Plan shall include a project schedule for each major activity and submission of deliverables generated during the Remedial Design. The URRD Work Plan shall include, at a minimum, a pre-design QAPP and a Field Sampling Plan. As part of the Remedial Design Work Plan, the Settling Defendant shall discuss how each component of the Upper River remedy will be addressed individually.

c. Upon approval of the Upper River Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, or upon entry of this Consent Decree, whichever is later, Settling Defendant shall implement the Upper River Remedial Design Work Plan. The Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Upper River Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to

Section X (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendant shall not commence further Remedial Design activities at the Site prior to approval of the Upper River Remedial Design Work Plan.

d. The 50% design submittal for each phase of the Upper River Remedial Action shall include, at a minimum, the following: (1) Results of additional field sampling; (2) Design assumptions and parameters, including design restrictions, process performance criteria, appropriate unit processes for the treatment train, and expected removal or treatment efficiencies for both the process and waste (concentration and volume), as applicable; (3) Sediment Removal Verification Plan (in appropriate phase), including the proposed cleanup verification methods (i.e., probing methods) and compliance with Applicable or Relevant and Appropriate Requirements (ARARs); (4) Outline of required specifications; (5) Proposed siting/locations of processes/construction activity; (6) Mitigation Plan to restore habitats that have been physically impacted by sediment removal or soil excavation equipment (not including the soft sediment deposits themselves); (7) Expected long-term monitoring and operation requirements; (8) Real estate, easement, and permit requirements; (9) Preliminary construction schedule, including contracting strategy. Any value engineering proposals must be identified and evaluated during this review.

e. The final design submittal for each phase of the Upper River Remedial Action shall include, at a minimum, the elements identified in the above paragraph and the following: (1) Final Field Sampling Plan; (2) Draft Construction Quality Assurance Project Plan (CQAPP); (3) Final H & S Plan; (3) Final Sediment Removal Verification Plan (in appropriate phase); (4) Draft Operation and Maintenance Plan; (5) Contingency Plan; (6) Capital and

Operation and Maintenance Cost Estimate. This cost estimate shall refine the FS cost estimate to reflect the detail presented in the Final Design; (7) Final Project Schedule for the construction and implementation of the Remedial Action which identifies timing for initiation and completion of all critical path tasks. The final project schedule submitted as part of the Final Design shall include specific dates for completion of the project and major milestones. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official (“QA Official”), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phases of the project.

12. Upper River Remedial Action.

a. Within 60 days after receipt of EPA’s approval of the final design submittal for the relevant phase of the Upper River Remedial Action, the Settling Defendant shall award the principal remedial action contract(s) for that phase. Within 150 days after receipt of EPA’s approval of that final design submittal, Settling Defendant shall submit to EPA and the state a work plan for the performance of that phase of the Upper River Remedial Action at the Site (“Upper River Remedial Action Work Plan”), which shall plainly identify the phase of work it addresses. The Upper River Remedial Action Work Plan shall provide for construction and implementation of that phase of the Upper River remedy and achievement of the Performance Standards in accordance with this Consent Decree, the URSOW, and the design plans and specifications developed in accordance with the Upper River Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Upper River Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as it submits the Upper River Remedial Action Work Plan, Settling Defendant shall submit to

EPA a Health and Safety Plan for field activities required by the Upper River Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Upper River Remedial Action Work Plan for each phase of the Upper River Remedial Action shall include the following: (1) the schedule for completion of that phase; (2) schedule for developing and submitting other required plans for that phase; (3) final Construction Quality Assurance Plan; (4) methods for satisfying any applicable permitting requirements; (5) methodology for implementation of the Contingency Plan; (6) tentative formulation of the Upper River Remedial Action Project team; (7) construction quality control plan (by constructor); and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Upper River Remedial Action Work Plan for each phase also shall include a schedule for implementation of all Upper River Remedial Action tasks identified in the final design submittal for that phase.

c. Upon approval of the pertinent Upper River Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendant shall implement the activities required under the approved Plan. The Settling Defendant shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Upper River Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section X (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendant shall not commence physical Upper River Remedial Action activities at the Site prior to approval of the pertinent Upper River Remedial Action Work Plan.

13. a. The Settling Defendant shall continue to implement the Upper River Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

b. Technical Impracticability Modification of Performance Standards.

i. Petition. For purposes of this Consent Decree and the Upper River Work, the Settling Defendant may petition EPA to modify the 88% PCB mass removal or 0.5 ppm surface weighted average PCB concentration (SWAC) Performance Standards contained in the Upper River sections of the ROD and URSOW. Settling Defendant's petition shall include: (a) an identification of the Performance Standard for which a modification is sought; (b) a detailed justification setting forth the technical basis for the claim that it is technically impracticable to achieve the Performance Standard through soft sediment dredging, based on data from the Upper River Work and any other relevant information; (c) a proposed alternative Performance Standard; and (d) a demonstration that the Upper River Work and/or any alternative cleanup standards at the Site, together with any additional response actions taken or proposed to be taken by Settling Defendant in the petition, will attain overall protection of human health and the environment and the other Performance Standards in the Upper River sections of the ROD and URSOW.

ii. Determination. Based on its review of the petition and the supporting documentation submitted by Settling Defendant pursuant to Subparagraph 13.b.i. above and other relevant information, and after notice and an opportunity for the State to review and comment on any proposed modification under this Paragraph, EPA will determine whether to

modify any Performance Standards contained in the Upper River Sections of the ROD and URSOW and will identify any new Performance Standards to be attained. The determination shall be made in accordance with all applicable laws and regulations in effect at the time of the petition. Any alternative Performance Standard selected by EPA pursuant to this Paragraph shall meet the requirements of CERCLA and the NCP, including protection of human health and the environment. If EPA grants any petition pursuant to this Paragraph, the URSOW shall be modified in accordance with Section XXX of this Consent Decree to include any alternative Performance Standard established. If EPA fails to provide a written determination within 120 days of the receipt of Settling Defendant's petition, the petition shall be considered denied, unless EPA and Settling Defendant agree to extend this period.

iii. Review. Settling Defendant may challenge EPA's determination under Subparagraph 13.b.ii. above in accordance with the Dispute Resolution provisions in Paragraph 62 of this Consent Decree.

14. Modification of the URSOW or Related Work Plans.

a. If EPA determines, after reasonable opportunity for review and comment by the State, that modification to the Upper River Work specified in the URSOW and/or in work plans developed pursuant to the URSOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the Upper River Sections of the ROD (as further delineated in the URSOW), EPA may require that such modification be incorporated in the URSOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent

with the scope of the remedy in the Upper River Sections of the ROD (as further delineated in the URSOW).

b. For the purposes of this Paragraph and Paragraph 45, the “scope of the remedy in the Upper River Sections of the ROD (as further delineated in the URSOW)” consists of: 1) re-characterizing the Upper River soft sediments and removing a minimum of 88 percent of the remaining PCB mass in the soft sediment deposits (through dredging or excavation) to achieve a soft sediment surface weighted average PCB concentration of less than or equal to 0.5 ppm (or any alternative performance standard established under Paragraph 13.b); 2) excavating and disposing of flood plain soils in areas FPR-3, FPL-4, FPR-5, FPR-6, FPR-7, and FPL-8 containing PCB concentrations greater than 10 ppm; 3) removing or controlling remaining PCB sources to the river, including sources at the Tecumseh Products Plant, the river bank soils and near-shore sediments with significantly elevated PCB concentrations as described in the URSOW; 4) long-term monitoring of Plant ground-water and, 5) if U.S. EPA determines that ground-water at the Tecumseh Plant is discharging PCBs to the Sheboygan River, and natural attenuation is not appropriate as a final ground-water remedy, implementing a ground-water collection and treatment system.

c. If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XVIII (Dispute Resolution). The standard of review shall be that set forth in Paragraph 62 (record review). The URSOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendant shall implement any Upper River Work required by any modifications incorporated in the URSOW and/or in work plans developed pursuant to the URSOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the URSOW, or the Upper River Remedial Design or Upper River Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the URSOW and the Work Plans will achieve the Performance Standards.

16. a. Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

(1) The Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendant shall notify the state in which the planned receiving

facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

(2) The identity of the receiving facility and state will be determined by the Settling Defendant following the award of the contract for Upper River Remedial Action construction. The Settling Defendant shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Defendant shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440. Settling Defendant shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

17. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001) "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval, after a reasonable

opportunity for review and comment by the State, a Quality Assurance Project Plan (“QAPP”) that is consistent with the URSOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the “Contract Lab Program Statement of Work for Inorganic Analysis” and the “Contract Lab Program Statement of Work for Organic Analysis,” dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendant may use other analytical methods which are as stringent as or more stringent than the CLP- approved methods. Settling Defendant shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendant shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, “Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs,” (American National Standard, January 5, 1995), and “EPA Requirements for Quality Management Plans

(QA/R-2),” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

18. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendant shall notify EPA not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant' implementation of the Upper River Work.

19. Settling Defendant shall submit to EPA four paper copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise. Upon prior approval by EPA, Defendant may submit one electronic copy of the data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree in lieu of the paper copies. EPA shall timely provide to Settling Defendant one copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of EPA with respect to the implementation of this Consent Decree.

20. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

VIII. ACCESS AND INSTITUTIONAL CONTROLS

21. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by the Settling Defendant, the Settling Defendant shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States and its representatives, including EPA and its contractors, and WDNR and its representatives, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

1. Monitoring the Upper River Work;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;
6. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

7. Implementing the Upper River Work pursuant to the conditions set forth in Paragraph 79 of this Consent Decree;

8. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXIII (Access to Information);

9. Assessing Settling Defendant's compliance with this Consent Decree; and

10. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, dredging of sediments or construction in the Upper River without EPA approval; and

c. execute and record in the Register of Deeds Office in Sheboygan County, State of Wisconsin, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 21.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 21.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent

Decree. Settling Defendant shall grant the access rights and the rights to enforce the land/water use restrictions to the United States, on behalf of EPA and its representatives, and the State and its representatives. The Settling Defendant shall, if EPA so requests, within 45 days of such request, submit to EPA for review and approval with respect to such property:

1. A draft easement that is enforceable under the laws of the State of Wisconsin, and
2. a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except any utility easements or rights of way, or any conservation easements, or when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

Within 30 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Register of Deeds Office in Sheboygan County. Within 30 days of recording the easement, such Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

22. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than the Settling Defendant, Settling Defendant shall use best efforts to secure from such persons:

a. agreements to provide access thereto for Settling Defendant, as well as for the United States on behalf of EPA, as well as their representatives (including contractors), and the State, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 21.a of this Consent Decree;

b. agreements, enforceable by the Settling Defendant and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, dredging of sediments or construction in the Upper River without EPA approval; and

c. the execution and recording in the Register of Deeds Office in Sheboygan County, State of Wisconsin, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 21.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 21.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, or (iii) other appropriate grantees. Within 90 days after the submission date of the

relevant 50% design submittal for each phase of the Upper River Remedial Action as required by this Consent Decree, Settling Defendant shall submit to EPA for review and approval with respect to all property not owned by the Settling Defendant included in that phase:

1. A draft easement that is enforceable under the laws of the State of Wisconsin, and
2. a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except any utility easements or rights of way, or any conservation easements, or when those liens or encumbrances are approved by EPA or despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances)

Within 30 days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Register of Deeds Office in Sheboygan County. Within 30 days of the recording of the easement, Settling Defendant shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

23. If (a) any access or land/water use restriction agreements required by Paragraphs 22. a or 22. b of this Consent Decree are not obtained within 90 days after the submission date of the relevant 50% design submittal for that phase of the Upper River Remedial Action as required by this Consent Decree, or (b) any access easements or restrictive easements required by Paragraph 22.c of this Consent Decree are not submitted to EPA in draft form within 90 days after the submission date of the relevant 50% design submittal for that phase of the Upper River Remedial Action as required by this Consent Decree, or (c) Settling Defendant is unable to obtain an agreement pursuant to Paragraph 21.c.(1) or Paragraph 22.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this Consent Decree within 90 days after the submission date of the relevant 50% design submittal for that phase of the Upper River Remedial Action as required by this Consent Decree, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 22 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XV (Reimbursement of Response Costs), for all response costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of just compensation.

24. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendant agrees not to oppose EPA's efforts to secure such governmental controls.

25. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as any rights it might have to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

IX. REPORTING REQUIREMENTS

26. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the state two copies of written monthly progress reports that:

(a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data that have undergone appropriate QA/QC under Section VII of this Consent Decree and that were received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may

affect the future schedule for implementation of the Upper River Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA and the State by the fifteenth day of every month following the entry of this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 45.c of Section XIII (Notification of Completion). Upon prior approval by EPA, Defendant may submit one electronic copy of the reports required under this Paragraph in lieu of the paper copies. If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Upper River Work.

27. The Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

28. Upon the occurrence of any event during performance of the Upper River Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States

Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

29. Within 20 days of the onset of such an event, Settling Defendant shall furnish to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

30. Settling Defendant shall submit four copies of draft and three copies of final plans, reports, and data required by the URSOW, the Upper River Remedial Design Work Plan, the Upper River Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Upon prior approval by EPA, Defendant may submit one electronic copy of the reports required under this Paragraph in lieu of the paper copies.

31. All reports and other documents submitted by Settling Defendant to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

32. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify

the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendant at least one notice of deficiency and an opportunity to cure within 60 days, except where to do so would cause serious disruption to the Upper River Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

33. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 32(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XVIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 32(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XIX (Stipulated Penalties).

34. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 32(d), Settling Defendant shall, within 60 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XIX, shall accrue during the 60-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 35 and 36.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 32(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XIX (Stipulated Penalties).

35. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XVIII (Dispute Resolution).

36. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XVIII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XVIII (Dispute Resolution) and Section XIX (Stipulated Penalties) shall govern the implementation of the Upper River Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XIX.

37. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent

Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XI. PROJECT COORDINATORS

38. Within 20 days of entry this Consent Decree, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Upper River Work. The Settling Defendant's Project Coordinator shall not be an attorney for the Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. EPA hereby approves Pollution Risk Services, LLC., as Settling Defendant's Project Coordinator.

39. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants and WDNR and its representatives, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the

National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Upper River Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

40. EPA's Project Coordinator and the Settling Defendant's Project Coordinator will meet during active field work periods, at a minimum, on a monthly basis.

XII. ASSURANCE OF ABILITY TO COMPLETE UPPER RIVER WORK

41. Within 30 days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of \$28 million in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Upper River Work;
- b. One or more irrevocable letters of credit equalling the total estimated cost of the Upper River Work;
- c. A trust fund;
- d. A guarantee to perform the Upper River Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Settling Defendant, or;
- e. A demonstration that the Settling Defendant satisfies the requirements of 40 C.F.R. § 264.143(f).

42. If the Settling Defendant seeks to demonstrate the ability to complete the Upper River Work through a guarantee by a third party pursuant to Paragraph 41.d of this Consent Decree, Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Upper River Work by means of the financial test or the corporate guarantee pursuant to Paragraph 41.d or 41.e, it shall resubmit a sworn statement conveying the information required by 40 C.F.R. § 264.143(f) annually, within 30 days of the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 41 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Upper River Work shall not excuse performance of any activities required under this Consent Decree.

43. If Settling Defendant can show that the estimated cost to complete the remaining Upper River Work has diminished below the amount set forth in Paragraph 41 above after entry of this Consent Decree, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Upper River Work to be performed. Settling Defendant shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendant may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

44. Settling Defendant may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendant may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIII. NOTIFICATION OF COMPLETION

45. Completion of the Upper River Work.

a. Within 90 days after Settling Defendant concludes that all phases of the Upper River Work (including Upper River O & M), have been fully performed, Settling Defendant shall schedule and conduct a pre-completion inspection to be attended by Settling Defendant and EPA. EPA shall notify the State of the date the pre-completion inspection is scheduled and give the State the opportunity to attend. If, after the pre-completion inspection, the Settling Defendant still believes that the Upper River Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Upper River Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant or the Settling Defendant's Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

b. If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Upper River Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in

writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Upper River Work. Provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the “scope of the remedy in the Upper River Sections of the ROD (as further delineated in the URSOW),” as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree, the ROD, and the URSOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section X (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution). Within 90 days after Settling Defendant concludes that the Upper River Work (including Upper River O & M and the activities required by EPA pursuant to this paragraph), have been fully performed, Settling Defendant shall schedule and conduct another pre-completion inspection.

c. If EPA concludes, based on the initial or any subsequent request for Notification of Completion by Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Upper River Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendant in writing.

XIV. EMERGENCY RESPONSE

46. In the event of any action or occurrence during the performance of the Upper River Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the

environment, Settling Defendant shall, subject to Paragraph 47, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA, Region 5. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the URSOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Reimbursement of Response Costs).

47. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XX (Covenants Not to Sue by Plaintiff).

XV. REIMBURSEMENT OF RESPONSE COSTS

48. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Settling Defendant shall pay to EPA the greater of the following amounts in payment for Past Response Costs: (1) \$2,100,000.00, or

(2) the total amount of funds, as of the date of payment, in the escrow account that Settling Defendant established with Comerica Bank on January 31, 2003. At the time of payment, Settling Defendant shall provide a copy of a bank statement showing the balance of the escrow account immediately prior to payment. Payment shall be made by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number ____, EPA Site ID Number 05X4, and DOJ Case Number 90-11-2-06440. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney’s Office for the Eastern District of Wisconsin following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXV (Notices and Submissions).

c. The total amount to be paid by Settling Defendant pursuant to Subparagraph 48.a. shall be deposited in the EPA Hazardous Substance Superfund.

49. Payments for Upper River Future Response Costs.

a. Settling Defendant shall pay to EPA all Upper River Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendant a bill requiring payment that includes a Itemized Cost Summary (ICS) of all costs subject to payment under this Paragraph. Settling Defendant shall make all payments within 30 days of Settling Defendant’s receipt of each bill requiring payment, except

as otherwise provided in Paragraph 50. Settling Defendant shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site ID Number 05X4, and DOJ Case Number 90-11-2-06440. Settling Defendant shall send the check(s) to:

U.S. EPA, Region 5, P.O. Box 56977, Chicago, IL, 60690

b. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXV (Notices and Submissions).

c. The total amount to be paid by Settling Defendant pursuant to Subparagraph 49.a shall be deposited in the EPA Hazardous Substance Superfund.

50. Settling Defendant may contest payment of any Upper River Future Response Costs under Paragraph 49 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXV (Notices and Submissions). Any such objection shall specifically identify the contested Upper River Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the 30 day period pay all uncontested Upper River Future Response Costs to the United States in the manner described in Paragraph 49. Simultaneously, the Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Illinois and remit to that escrow account funds equivalent to the amount of the contested Upper River Future Response

Costs. The Settling Defendant shall send to the United States, as provided in Section XXV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Upper River Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XVIII (Dispute Resolution). If the United States prevails in the dispute, within 5 working days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 49. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 49; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Upper River Future Response Costs.

51. In the event that the payments required by Subparagraph 48.a are not made within 30 days of the Effective Date or the payments required by Paragraph 49 are not made within 30 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue 30 days after the Effective Date. The Interest on Upper River Future Response Costs

shall begin to accrue on the date the bill is sent to Settling Defendant by EPA. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 66. The Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 49.

XVI. INDEMNIFICATION AND INSURANCE

52. Settling Defendant's Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its

behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 52, and shall consult with Settling Defendant prior to settling such claim.

53. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Upper River Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Upper River Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

54. No later than 15 days before commencing any on-site Upper River Work, Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's approval of the Completion of Remedial Action Report for the final phase of Upper River Remedial Action as required under Task 5. D. 2 of the URSOW, comprehensive general liability insurance with limits (total of primary plus excess) of 3 million dollars, combined single limit, and automobile liability insurance with limits of 2 million dollars, combined single limit, naming the United

States as additional insured. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Upper River Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Upper River Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Defendant may satisfy the requirements of this Paragraph if it submits to EPA for approval one of the financial assurance mechanisms of Section XII (Assurance of Ability to Complete Work), meeting all requirements of Section XII, demonstrating an ability to pay the amounts required under this Paragraph above and beyond the amount required by Section XII.

XVII. FORCE MAJEURE

55. “Force majeure,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercises “best

efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. “Force Majeure” does not include financial inability to complete the Upper River Work or a failure to attain the Performance Standards.

56. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 2 business days of when Settling Defendant first knew that the event was likely to cause a delay. Within 5 business days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure and may provide further information if it becomes available. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to

comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

57. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in writing of the length of the extension for performance of the obligations affected by the force majeure event.

58. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XVIII (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 55 and 56, above. If Settling Defendant carries this burden, the delay at issue shall

be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XVIII. DISPUTE RESOLUTION

59. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

60. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

61. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position

shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 62 or Paragraph 63.

b. Within 20 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 62 or 63. Within 10 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 62 or 63, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 62 and 63.

62. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.

Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute. The record will be available for inspection and copying by Settling Defendant.

b. The Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 62.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 62.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 62.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within 14 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion in accordance with any schedule established by the Court.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Director of the Superfund Division, EPA Region 5, is arbitrary and capricious or otherwise not in accordance

with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 62.a.

63. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 61, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendant unless, within 14 days of receipt of the decision, the Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion in accordance with any schedule established by the Court.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

64. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 65. Notwithstanding the stay of

payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIX (Stipulated Penalties).

XIX. STIPULATED PENALTIES

65. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 66 and 67 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVII (Force Majeure).

“Compliance” by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the URSOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

66. Stipulated Penalty Amounts - Upper River Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 66.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 14th day
\$ 1,500	15th through 30th day
\$ 2,000	31st day and beyond

b. Compliance Milestones.

1. Submission of acceptable RD Work Plan.

2. Completion of Upper River RD field work.

3. Submission of acceptable Upper River RA Work Plans.

4. Initiation of a phase of the Upper River Remedial Action as specified in the Upper River Work Plans.

5. Completion of a phase of the Upper River Remedial Action as specified in the Upper River Work Plans.

6. Failure to provide access under Paragraph 21 or to seek access under Paragraph 22.

7. Failure to pay Costs in accordance with Paragraphs 48, 49, and 50.

67. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 26, 30, and 31:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1,000	15th through 30th day
\$ 1,500	31st day and beyond

68. In the event that EPA assumes performance of a portion or all of the Upper River Work pursuant to Paragraph 79 of Section XX (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$2 Million.

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of

Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendant of any deficiency;

(2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 62.b or 73.a of Section XVIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute;

or (3) with respect to judicial review by this Court of any dispute under Section XVIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

70. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

71. All penalties accruing under this Section shall be due and payable to the United States within 60 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XVIII (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check made payable to "EPA Hazardous Substances

Superfund,” shall be mailed to U.S. EPA, Region 5, P.O. Box 56977, Chicago, IL, 60690, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site ID #05X4, the DOJ Case Number 90-11-2-06440, and the name and address of the party making payment. Copies of checks paid pursuant to this Section, and any accompanying transmittal letters, shall be sent to the United States as provided in Section XXV (Notices and Submissions).

72. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Upper River Work required under this Consent Decree.

73. Penalties shall continue to accrue as provided in Paragraph 69 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 60 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least

every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

74. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 71.

75. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

76. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XX. COVENANTS NOT TO SUE BY PLAINTIFF

77. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraph 78 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant under CERCLA Section 106 or 107, 42 U.S.C. §§ 9606, 9607; RCRA Section 7003, 42 U.S.C. § 6973; Clean Water Act Section 311, 33

U.S.C. § 1321, or Toxic Substances Control Act Section 7, 15 U.S.C. § 2606, for performance of the Upper River Work and for recovery of Past Response Costs and Upper River Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payment required by Paragraph 48.a of Section XV (Payments for Response Costs). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person.

78. General reservations of rights. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 77. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD (as further delineated by the URSOW), the Work, or otherwise ordered by EPA;
- d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Upper River Remedial Action;

g. liability, prior to notification of Completion of the Upper River Work, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required under this Consent Decree pursuant to Paragraph 14 (Modification of the URSOW or related Work Plans);

h. liability for response actions on the Middle River and Lower River and Harbor at the Site or other work elements to complete the response actions contemplated in the ROD, excluding any response actions relating to the Upper River;

i. liability for costs that the United States will incur related to areas of the Site other than the Upper River; and

j. liability for additional response actions that may be required pursuant to CERCLA Section 121(c), 42 U.S.C. Section 9621(c).

79. Upper River Work Takeover. In the event EPA determines that Settling Defendant has ceased implementation of any portion of the Upper River Work, is seriously or repeatedly deficient or late in its performance of the Upper River Work, or is implementing the Upper River Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Upper River Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XVIII (Dispute Resolution), Paragraph 63, to dispute EPA's determination that takeover of the Upper River Work is warranted under this Paragraph. Costs incurred by the United States in

performing the Upper River Work pursuant to this Paragraph shall be considered Upper River Future Response Costs that Settling Defendant shall pay pursuant to Section XV (Reimbursement of Response Costs).

80. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANTS BY SETTLING DEFENDANT

81. Covenant Not to Sue. Subject to the reservations in Paragraph 82, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Upper River Work, past response actions at the Site, and Upper River Future Response Costs as defined in this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 89 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 75, 77, 78 (b) - (d) or 78 (g) -

(i), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

82. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred; provided, however, that (1) any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671, nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans or activities; and (2) this reservation applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

83. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

84. Settling Defendant agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Upper River portion of the Site, including for contribution, against any person where the person's liability to Settling Defendant

with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Upper River Portion of the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XXII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

85. Except as provided in Paragraph 84, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as specifically provided in Paragraph 84, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

86. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for Matters Addressed in this Consent Decree.

87. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

88. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 30 days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

89. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

90. The Parties agree and, by entering this Consent Decree, this Court finds, that for purposes of CERCLA Section 113(g)(2)(B), 42 U.S.C. § 9613 (g)(2)(B), physical on-site construction of the Upper River Remedial Action does not constitute physical on-site construction of the remedial actions for the Middle and Lower River and Harbor areas of the Site.

XXIII. ACCESS TO INFORMATION

91. Settling Defendant shall provide to EPA and WDNR, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Upper River Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Upper River Work.

92. Business Confidential and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential

under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

93. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXIV. RETENTION OF RECORDS

94. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 45.c of Section XIII (Notification of Completion), Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that indicate or prove its liability under CERCLA with respect to the Site, provided, however,

any Settling Defendant who is potentially liable as owner or operator of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Upper River Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Upper River Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

95. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or

generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

96. The Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since the Special Notice was issued for Upper River RD/RA on March 30, 2001, and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and § 3007 of RCRA, 42 U.S.C. § 6927.

XXV. NOTICES AND SUBMISSIONS

97. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-06440

and

Matthew Richmond
Assistant United States Attorney
Office of United States Attorney
Eastern District of Wisconsin
Federal Building, Room 530
517 E. Wisconsin Avenue
Milwaukee, WI 53202

As to EPA:

William Munro
Director, Superfund Division
United States Environmental Protection Agency
Region 5 (S-6J)
77 W. Jackson Blvd.
Chicago, IL 60604

and

John O'Grady
EPA Project Coordinator
United States Environmental Protection Agency
Region 5 (SR-6J)
77 W. Jackson Blvd.
Chicago, IL 60604

As to the Regional Financial Management Officer:

Darius Taylor
Financial Management Office
United States Environmental Protection Agency
Region 5 (MF-10J)
77 W. Jackson Blvd.
Chicago, IL 60604

As to the State of Wisconsin

Tom Wentland
WDNR Project Manager
Wisconsin Department of Natural Resources
Southeast Region, Richards Street Annex
4041 N. Richards Street
P.O. Box 12436
Milwaukee, WI 53212

and

Franc Fennessy
Deputy Secretary
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison Wisconsin 53707

As to the Settling Defendant:

Kerry J. DeKeyser
Director, Environmental Control
Tecumseh Products Company
1604 Michigan Avenue
New Holstein, WI 53601

and

Steven M. Jawetz
Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005

XXVI. EFFECTIVE DATE

98. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVII. RETENTION OF JURISDICTION

99. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVIII (Dispute Resolution) hereof.

XXVIII. APPENDICES

100. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is the URSOW.

“Appendix C” is the description and/or map of the Site.

XXIX. COMMUNITY RELATIONS

101. Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Upper River Work to the public. As requested by EPA, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXX. MODIFICATION

102. Schedules specified in this Consent Decree for completion of the Upper River Work may be modified by agreement of EPA and the Settling Defendant. All such modifications shall be made in writing.

103. Except as provided in Paragraph 14 (Modification of the URSOW or Related Work Plans), no material modifications shall be made to the URSOW without written notification to and written approval of the United States, Settling Defendant, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the URSOW that do not materially alter that document, or material modifications to the URSOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

104. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

105. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or

considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

106. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. SIGNATORIES/SERVICE

107. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

108. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

109. The Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXIII. FINAL JUDGMENT

110. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

111. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Tecumseh Products Company, relating to the Sheboygan Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

Date

Leslie E. Lehnert
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Date

Matthew Richmond
Assistant United States Attorney
Office of United States Attorney
Eastern District of Wisconsin
Federal Building, Room 530
517 East Wisconsin Avenue
Milwaukee, WI 53202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Tecumseh Products Company, relating to the Sheboygan Superfund Site.

Date

Thomas V. Skinner
Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, IL 60604

Date

Richard L. Nagle
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Tecumseh Products Company, relating to the Sheboygan Superfund Site.

FOR TECUMSEH PRODUCTS COMPANY
(Please type or print, except for signature line for Officer)

Date: _____

Address:

Tecumseh Products Company
100 E. Patterson Street
Tecumseh, MI 49286

(517) 423-8527

Name of Officer

Signature of Officer

Title

If different from above, the following is the name and address of Settling Defendant's agent for service and the name and address of Settling Defendant's counsel. Counsel may act as agent for service.

Agent for Service

Attorney

Name

Steven M. Jawetz
Beveridge & Diamond, P.C.
1350 I Street, N.W., Suite 700
Washington, DC 20005

Address

(202) 789 - 6045

Each Settling Defendant shall notify the United States Department of Justice of any change in the identity or address of Settling Defendant, its agent for service, or its counsel.